IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No. 2 of 2003

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STATE OF GUJARAT - Applicant(s)
Versus
MAHAVIR ENGINEERING & ELECTRICSTORES - Respondent(s)

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Appearance :
Mr Dipen Desai, ASSTT.GOVERNMENT PLEADER for Applicant(s) : 1,
MR TANVISH U BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR JUSTICE R. S. GARG
and
HONOURABLE MR JUSTICE D.H. WAGHELA

Date : 13/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Mr Dipen Desai, learned counsel for the Revenue and Mr Tanvish Bhatt, learned counsel for the assessee are heard.

2. The Gujarat Sales Tax Tribunal at Ahmedabad has decided certain issues in favour of the assessee vide its judgment dated 9.12.1994 delivered in Revision Applications No. 86 and 87 of 1993. The Tribunal held that the "tool-bits" would fall under Entry No.3 (ix) of Schedule II-A appended to the Act and "jobber-drills" (drill pana) would be covered by

Entry No.16(1) of Schedule II-A to the Act read with Entry No.36 of the Government Notification issued under Section 49(2) of the Act. The Revenue, being dissatisfied with the said order, made an application for reference, the same was allowed and a Reference has been made to this Court under section 69 of the Gujarat Sales Tax Act for its opinion on the following question:

> *"Whether on the facts and circumstances of the case the decision of the Gujarat Sales Tax Tribunal datetd 9.12.1994 in revision applications No.86 and 87 of 1993 is legal and proper when it hold that the sales of "tool bits" effected by the opponent during the periods under consideration would be covered by Entry 3(ix) in Schedule II-A of the Gujarat Sales Tax Act 1969 and the sales of "jobber drills" (Drill Panna) would be covered by entry 16(1) in Schedule II-A to*

the Act read with entry 36 of the Gujarat Notification under section 49(2) of the Act or whether it should be covered by entry 13 of Schedule III of the Act" ?

3. The opponent is a dealer dealing in machinery spare parts and it is duly registered as a dealer under the Central Sales Tax Act, 1956 and the Gujarat Sales Tax Act, 1969. Assessment proceedings relating to Samvat Year 2042-2043 were taken up and it was found that in those years, the opponent had purchased "tool-bits" and "jobber-drills" so also carbide tips from outside the State and sold the same within the State. The learned Sales Tax Officer treated the sales of the above items as covered by Entry No.16(1) of Schedule II-A to the Act and accordingly calculated tax on such sales at the rate applicable to the Entry which was 4% at the relevant time. Learned Assistant Commissioner, after examining the assessment record, observed that the assessment made by the learned Sales Tax Officer was not proper in classification of "tool-bits" and "jobber-drills", he observed that these items could

not be considered as machinery parts and accessories for the purpose of Section 16(1) of Schedule II-A read with Entry No.36 of the Government Notification. He observed that “tool-bits”, so also the “jobber-drills” would be covered by Entry No.13 of Schedule III to the Act which relates to articles not specified in any other entry. The learned Commissioner, therefore, issued notice in Form-49 and initiated revisional proceedings against the opponent. The assessee-opponent appeared and raised various contentions which were not accepted by the learned Commissioner who revised the order of assessment and held the sale of “tool-bits” and “jobber-drills” to be taxable under Entry No.13 of Schedule III to the Act. The learned Assistant Commissioner accordingly raised demand of Rs.64,228 (interest amount Rs.29,670) and Rs. 63,496/- (interest Rs. 29,326/-)

4. The assessee, being aggrieved by the order passed by the learned Commissioner, preferred Revision Applications No.86 and 87 of 1993. The Tribunal, after hearing the parties, passed a common

judgment in both the matters and held that sale of “tool-bits” effected by the assessee during the assessment period would be covered by Entry 3(ix) of Schedule II-A and the sale of “jobber-drills” would be covered by Entry No.16(1) of Schedule II-A of the Act read with entry 36 of Government Notification issued under section 49(2) of the Act which were prevalent at the material time. The State, being aggrieved by the said judgment, made an application for Reference to the Tribunal. The Tribunal has accordingly made the Reference on the question as aforesaid.

5. Shri Desai, learned counsel for the Revenue, after taking us through the order passed by the Tribunal, submits that the Tribunal was absolutely unjustified in holding that “tool-bits” would fall within Entry No.3(ix) of Schedule II-A because Entry No.3(ix) of Schedule II-A is for a different purposes. He also submits that the Tribunal was also unjustified in holding that “jobber-drills” (drill pana) would not be a part of machinery for purposes of Entry No.16(1) of Schedule II-A read with Entry

36 of Government Notification issued under section 49(2) of the Act. According to him, when these items have not been classified as machinery for the purpose of Entry No. 16 or as tool or alloy and special steel of any of the above categories, then these items would fall in the residuary entry. Opposing the said submission, Mr Bhatt, learned counsel for the assessee submits that present is not a case where the assessee was paying tax in his own understanding but present is a case where the department itself, while dealing with two applications submitted under section 62 of the Act, has held that “tool-bits” would fall within entry No.3(ix) of Schedule II-A of the Act. He submits that, so long as the order passed by the Assistant Commissioner holding “tool-bits” to be falling under Entry 3(ix) stands, the State or the Department would not be allowed to say anything contrary to the order passed by its own officers. He also submits that in absence of “jobber-drills”, the machine would be incomplete and under such circumstances, it would, not only be a spare part or accessory but would be an integral part of the machinery. He submits that the Tribunal was

absolutely justified in deciding in favour of the assessee.

6. To appreciate the rival submissions, we are required to look into order No.1990/D262 dated 13.11.1990 passed by the Deputy Sales Tax Commissioner (Law), Gujarat State, Ahmedabad on an application submitted by M/s. BPCO Industries Ltd. for determination of tax payable on “tool-bits” and yet another order dated 13.8.1991 passed on a similar application filed under section 62 of the Act by the learned Dy. Sales Tax Commissioner (Law), Gujarat State. In both the matters, the Dy. Sales Tax Commissioners, after giving their thoughtful consideration to the facts, held that “tool-bits”, which was being manufactured by the applicant before them, was not “ready for use”, because, some specific job was done to the tool for making it usable. The Dy. Sales Tax Commissioner also found that the “tool-bits” sold by the said applicant would be taxable under Entry 3(ix) of Schedule II-A of the Act.

7. Section 62 of Gujarat Sales Tax Act, 1969 relates to determination of disputed questions. For our purpose, Clause (e) of sub-section (1) of section 62 would be material which reads as under:

> *"62. Determination of disputed questions -*
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> *(1)If any question arises, otherwise than in proceedings before a court, or proceedings under section 41 or 44, whether for the purposes of this Act, any tax is payable in respect of any particular (sale, specified sale or purchase) or if tax is payable the rate thereof, the Commissioner shall make an order determining such question."*

Under the Act, the final authority to determine the dispute is conferred upon the Commissioner or any of his authorised representatives. Such an order would be binding between the parties and if any of the parties are aggrieved by the order, then it has to challenge the said order before the Appellate forum. Undisputedly, the above referred two orders still

stare in the eyes of the Department. It is to be noted that the said orders have yet not been challenged by the Department before any Appellate forum. Under the circumstances, the orders would not only bind the applicant who made the Reference but would also bind the State Sales Tax Department which was a party before the Commissioner of Sales Tax. Under the circumstances, we must hold that the Tribunal was justified in holding that “tool-bits” would be taxable under Entry 3(ix) of Schedule II-A of the Act.

8. So far as the “jobber-drills” are concerned, the Tribunal has observed that “jobber-drills” are fixed in machinery which are known as speed drilling machines to bore holes in different types of articles. The Tribunal also held that the manner in which “jobber-drills” are fitted and pressed into action, would clearly show that they become part of the machinery for purposes of making small bores or holes in any type of articles. In our opinion, the Tribunal was not unjustified in holding that “jobber-drill” would be worth-nothing unless it is used as

part of the machinery. When speed drills or jobber's drills are used with the help of the machinery, then they would become part of the said machinery. It is also to be noted that without the said “jobber-drills” neither the machine would be complete nor the driller would be worth any use in absence of its use in the machinery.

9. Entry 36 of the Government Notification dated 20-6-1970 issued under section 49(2) says that sales of spare parts and accessories (excluding ball bearing) of machinery which is covered by sub-entry I of Entry No.16 in Part–A of Schedule II would enjoy exemption to the extent to which the amount of sales tax exceeds (3 paise in rupee) and whole of the general Sales Tax. If “jobber-drill” is taken to be a spare part of the machinery or as an accessory of the machinery, then Entry No.36 which relates to exemption to a particular item would come into play to assist the case in cause of the present assessee.

10. In our opinion, the Tribunal was absolutely justified in deciding the questions in favour of the

assessee.

11. The Reference is answered in affirmative, in favour of the assessee and against the Revenue. It accordingly stands disposed of. No costs.

[R. S. Garg, J.]

[D. H. Waghela, J.]

msp